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TO ENRICH LIVES THROUGH EFFECTIVE AND CARING SERVICE



United We Stand

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To: Each Supervisor

From: Joan Ouderkirk
Director

Subject: **DEBARMENT HEARING FOR INFORMATION INTEGRATORS
AGENDA ITEM 63 - FEBRUARY 18, 2003**

Agenda Item 63 is a letter from the Contractor Hearing Board (CHB) recommending that your Board adopt the proposed findings, decision, and recommendations of the CHB to not debar Information Integrators, Inc. and its principal owners from bidding on, being awarded, and/or performing work on projects for Los Angeles County. Also on the agenda are additional CHB letters recommending debarment of two firms – Advanced Data Solutions (Agenda Item 61) for a period of three years and MTS Advanced Corporation (Agenda Item 62) for a period of four months.

ISD initiated debarment proceedings against all three firms as a result of a material breach of the terms of each firm's Information Technology Support Services Master Agreement (ITSSMA) arising from subcontracting of "time and materials" work orders and misrepresenting those subcontractors as contractor employees.

ISD does not object to the CHB recommendation to not debar Information Integrators, Inc. and agrees with Finding 1, which clearly demonstrates that the firm violated the terms of the contract:

"A preponderance of evidence showed that three work orders... issued to Information Integrators...were performed by subcontractors, rather than contractor employees..." and that "In each instance, Information Integrators had submitted, under penalty of perjury, "Certification of Employee Status" forms ..." (attesting to the fact that the workers were employees of Information Integrators, which they were not).

ISD agrees with the CHB finding that:

"Information Integrators' perfunctory signing/stamping the "Certification of Employee Status" forms under penalty of perjury indicated a lack of business integrity, demonstrated poor business practices and was inconsistent with the high standards required of County contractors by the Board of Supervisors."

While ISD has no objection to the recommendation of "No debarment", ISD does object to some of the findings in mitigation.

CHB Findings in Mitigation

CHB Finding

The CHB found that *"ITSSMA language...may reasonably cause confusion in regards to the distinctions between "time and materials" and "fixed price" requirements."*

ISD Position

The ITSSMA contract explicitly forbids subcontracting for Time and Material Work Orders. Two of the Work Orders were clearly identified as Time and Material Work Orders although the third Work Order referenced Fixed Price work which had previously been completed, it clearly only pertained to Time and Material work. The ITSSMA contract also requires that:

"No performance of this Master Agreement, or any portion thereof, shall be subcontracted by CONTRACTOR without the prior written consent of the COUNTY'S MAPD (i.e., project director), which COUNTY shall exercise in its sole discretion. Any attempt by CONTRACTOR to subcontract without the prior written consent of COUNTY shall be null and void, and may be deemed by the COUNTY, in its sole discretion, to be a material breach of this Master Agreement."

This language is clear. Given that Information Integrators is a technology firm and has received over \$7.2 million in County Work Orders requiring precise and technical work, they should be capable of reading, comprehending, and adhering to their contract terms. Although the CHB may appropriately conclude that Information Integrators was confused, it is not reasonable to assume that this confusion was the result of unclear ITSSMA contract language.

CHB Finding

The CHB found that Information Integrators intended to comply with ITSSMA because they sought subcontracting approval although *"...this form did not reach the appropriate party in ISD..."*

ISD Position

The CHB may reasonably find intent to comply. However, it is important to note that there was no evidence submitted that anyone in ISD received the subcontracting request.

CHB Finding

The CHB found that ISD lacked procedures to assure receipt of a subcontracting request which would have identified a potential contract problem before it escalated to contract termination.

ISD Position

ISD does not believe it is possible to establish procedures to detect and respond to a fax transmittal that was never confirmed as sent or is sent to the wrong individual. The contract requires written consent by the County's Master Agreement Project Director, as ISD issues hundreds of Work Orders and deals with over one hundred vendors. ISD does not agree that a lack of procedures is a factor in mitigation.

CHB Finding

The CHB found that ISD should have given the contractor a chance to explain and take corrective action which would have *"avoided further action against the contractor."*

ISD Position

The suggestion that the contract violations should have been handled informally is inconsistent with the CHB's finding that Information Integrators showed:

"...a lack of business integrity, demonstrated poor business practices and was inconsistent with the high standards required of County contractors by the Board of Supervisors."

The Contract Debarment Ordinance provides that the County may debar a contractor if County finds that contractor has done a number of things including:

"...Violated any term of a contract with the County"; and

“....Committed an act or offense which indicates a lack of business integrity or business honesty”

The CHB found that Information Integrators materially breached the contract and lacked business integrity. ISD believes that the CHB is the proper forum to review serious breaches of contractor performance for the purpose of future debarment. This case resulted from vendor complaints causing an audit of several firms. Based on the audit results, three firms were found to have been in violation of their ITSSMA contracts. All three firms were referred to the CHB for debarment consideration. ISD does not believe it is appropriate to preempt the role of the CHB in these serious cases.

CHB Finding

The CHB found that *“No evidence was presented by ISD regarding cover costs for rebidding the cancelled Work Orders.”* Because of this, the CHB concluded that the damages clause in the default provision of the contract should not apply if the Board adopts the CHB recommendation not to debar.

ISD Position

ISD did not submit evidence regarding cover costs for any of the three defaulted contracts because the CHB has no responsibility for ascertaining damages. The CHB appears to have erroneously concluded that a decision not to debar future business precludes recovery of damages for past default, which is incorrect. The CHB should avoid taking evidence and making findings regarding damages so that they do not jeopardize the County's legal position and expose the County to potential liability.

Other Evidence

The CHB received evidence that Information Integrators' actual performance on Work Orders was satisfactory. ISD does not dispute that the actual technical performance on Work Orders was satisfactory.

Conclusion

The CHB recommendation is reasonable, but some of the findings are inaccurate, inappropriate and may subject the County to liability. If the Board wishes to adopt the recommendation to not debar, ISD recommends that the Board adopt the following:

- 1) Adopt the CHB Finding #1 that Information Integrators, Inc. and its principal owners, Elena Shur (Shur), Lisa Stotelmyre (Stotelmyre), and Mary Tromp (Tromp), violated the terms of the contract with the County.
- 2) Adopt a finding that Information Integrators, Inc., and its principal owners Elena Shur (Shur), Lisa Stotelmyre (Stotelmyre), and Mary Tromp (Tromp), had no intent to violate the contract or defraud the County.
- 3) Adopt a recommendation of the CHB not to debar Information Integrators, Inc., and its principal owners, Elena Shur (Shur), Lisa Stotelmyre (Stotelmyre), and Mary Tromp (Tromp) from bidding on, being awarded, and or performing work on projects for the County of Los Angeles.
- 4) Instruct the Executive Office, Board of Supervisors, to send notice to Elena Shur, principal owner, advising that no debarment action was taken and that Information Integrators, Inc. may reapply for an ITSSMA contract.

am available to discuss these issues with your office prior to today's Board meeting.

JO:lm

c: Chief Administrative Office
County Counsel
Contractor Hearing Board